

§ 758.2

License Exception, or No License Required (NLR)), the Export Control Classification Number (ECCN) (when required), and the item description in the designated blocks. The item description must be stated in Commerce Control List terms. If those terms are inadequate to meet Census Bureau requirements, the FTSR requires that you give enough additional detail to permit verification of the Schedule B Number (or Harmonized Tariff Schedule number). The FTSR also requires separate descriptions of items for each Schedule B classification (or Harmonized Tariff Schedule number). See 15 CFR 30.6 (separate SED or AES records), § 30.7(l) (description of items) and § 30.9 (separation of items on the SED) of the FTSR.

(1) *Exports under a license.* When exporting under the authority of a license, you must enter on the SED or AES record the license number and expiration date (the expiration date is only required on paper versions of the SED), the ECCN, and an item description identical to the item description on the license.

(2) *Exports under a License Exception.* You must enter on any required SED or AES record the ECCN and the correct License Exception symbol (e.g., LVS, GBS, CIV) for the License Exception(s) under which you are exporting. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See also § 740.1(d) of the EAR.

(3) *No License Required (NLR) exports.* You must enter on any required SED or AES record the “NLR” designation when the items to be exported are subject to the EAR but not listed on the Commerce Control List (i.e., items are classified as EAR99), and when the items to be exported are listed on the CCL but do not require a license. In addition, you must enter the correct ECCN on any required SED or AES record for all items being exported under the NLR provisions that have a reason for control other than anti-terrorism (AT). The designator “TSPA” may be used, but is not required, when the export consists of technology or software outside the scope of the EAR.

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See § 734.7 through § 734.11 of the EAR for TSPA information.

(h) *Power of attorney or other written authorization.* In a “power of attorney” or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal.

(1) An agent must obtain a power of attorney or other written authorization in the following circumstances:

(i) An agent that represents a foreign principal party in interest in a routed transaction must obtain a power of attorney or other written authorization that sets forth his authority; and

(ii) An agent that applies for a license on behalf of a principal party in interest must obtain a power of attorney or other written authorization that sets forth the agent’s authority to apply for the license on behalf of the principal.

NOTE TO PARAGRAPH (h)(1): The Bureau of Census Foreign Trade Statistics Regulations impose additional requirements for a power of attorney or other written authorization. See 15 CFR 30.4(e) of the FTSR.

(2) This requirement for a power of attorney or other written authorization is a legal requirement aimed at ensuring that the parties to a transaction negotiate and understand their responsibilities. The absence of a power of attorney or other written authorization does not prevent BIS from using other evidence to establish the existence of an agency relationship for purposes of imposing liability.

(i) *Submission of the SED or AES record.* The SED or AES record must be submitted to the U.S. Government in the manner prescribed by the Bureau of Census Foreign Trade Statistics Regulations (15 CFR part 30).

[65 FR 42570, July 10, 2000, as amended at 67 FR 70546, Nov. 25, 2002; 68 FR 50473, Aug. 21, 2003; 69 FR 46080, July 30, 2004]

§ 758.2 Automated Export System (AES).

The Census Bureau’s Foreign Trade Statistics Regulations (FTSR) (15 CFR Part 30) contain provisions for filing Shipper’s Export Declarations (SEDs) electronically using the Automated Export System (AES). In order to use AES, you must apply directly to the

Census Bureau for certification and approval through a Letter of Intent (see 15 CFR 30.60(b) and Appendix A to part 30 of the FTSR). Three AES filing options are available for transmitting shipper's export data. Option 1 is the standard paper filing of the SED, while the other two options are electronic. Option 2 requires the electronic filing of all information required for export prior to export (15 CFR 30.61(a) and 30.63); Option 4 is available only for approved filers (approval by Census Bureau, Bureau of Customs and Border Protection, BIS and other agencies) and requires no information to be transmitted prior to export, with complete information transmitted within 10 working days of exportation (15 CFR 30.61(b) and 30.62).

(a) *Census' Option 4 application process.* Exporters, or agents applying on behalf of an exporter, may apply for Option 4 filing privileges by submitting a Letter of Intent to the Census Bureau in accordance with 15 CFR 30.60(b) and 30.62 of the FTSR. The Census Bureau will distribute the Letter of Intent to BIS and other agencies participating in the Option 4 approval process. Any agency may notify Census that an applicant has failed to meet its acceptance standards, and the Census Bureau will provide a denial letter to the applicant naming the denying agency. If the Census Bureau receives neither notification of denial, nor a request for an extension from the agency within 30 days of the date of referral of the letter of intent to the agency, the applicant is deemed to be approved by that agency. See 15 CFR 30.62(b) of the FTSR.

(b) *BIS Option 4 application process.* When AES filers wish to use Option 4 for exports of items that require a BIS license, those filers must seek separate approval directly from BIS by completing a questionnaire and certification. (Separate BIS approval is not required for the use of Option 4 in connection with exports that do not require a BIS license.) The questionnaire and certification should be mailed to: U.S. Department of Commerce, Bureau of Industry and Security, The Office of Enforcement Analysis, 14th & Pennsylvania Avenue, N.W., Room 4065, Washington, D.C. 20230.

(1) *Questionnaire.* The following questions must be answered based on your experiences over the past five years. If the answer to either of the questions is "yes", it must be followed with a full explanation. Answering "yes" to either of the questions will not automatically prevent your participation in Option 4. BIS will consider the facts of each case and any remedial action you have taken to determine whether your reliability is sufficient to participate in this program.

(i) Have you been charged with, convicted of, or penalized for, any violation of the EAR or any statute described in § 766.25 of the EAR?

(ii) Have you been notified by any government official of competent authority that you are under investigation for any violation of the EAR or any statute described in § 766.25 of the EAR?

(2) *Certification.* Each applicant must submit a signed certification as set forth in this paragraph. The certification will be subject to verification by BIS.

I (We) certify that I (we) have established adequate internal procedures and safeguards to comply with the requirements set forth in the U.S. Department of Commerce Export Administration Regulations (EAR) and Foreign Trade Statistics Regulations (FTSR). These procedures and safeguards include means for:

(i) Making a proper determination as to whether a license is required for a particular export;

(ii) Receipt of notification of approval of the export license, if required, before the export is made;

(iii) Compliance with all the terms and conditions of the license, License Exception, or NLR provisions of the EAR as applicable;

(iv) Return of revoked or suspended licenses to BIS in accordance with § 750.8(b) of the EAR, if requested;

(v) Compliance with the destination control statement provisions of § 758.6 of the EAR;

(vi) Compliance with the prohibition against export transactions that involve persons who have been denied U.S. export privileges; and

(vii) Compliance with the recordkeeping requirements of part 762 of the EAR.

I (we) agree that my (our) office records and physical space will be made available for inspection by the Bureau of the Census, BIS, or the U.S. Customs Service, upon request.

(c) *BIS Option 4 evaluation criteria.* BIS will consider the grounds for denial of Option 4 filing status set forth in 15 CFR 30.62(b)(2) of the FTSR, as well as the additional grounds for denial set forth in this paragraph.

(1) Applicants have not been approved for Option 4 filing privileges by the Census Bureau or other agency;

(2) Applicants are denied persons; or

(3) Exports are destined to a country in Country Group E:1 (Supplement No.1 to part 740 of the EAR).

(d) *Contacts for assistance.* (1) For additional information on the AES in general, please contact: Chief Foreign Trade Division, U.S. Census Bureau, (301) 457–2255, facsimile: (301) 457–2645.

(2) For information about BIS's Option 4 approval process to use AES Option 4 for items subject to the EAR, contact: Director, Office of Enforcement Analysis, Bureau of Industry and Security, (202) 482–4255, facsimile: (202) 482–0971.

[65 FR 42571, July 10, 2000, as amended at 67 FR 54953, Aug. 27, 2002; 68 FR 50473, Aug. 21, 2003]

§ 758.3 Responsibilities of parties to the transaction.

All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, as long as the transaction complies with the EAR. However, acting through a forwarding or other agent, or delegating or redelegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.

(a) *Export transactions.* The U.S. principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.

(b) *Routed export transactions.* All provisions of the EAR, including the end-use and end-user controls found in part 744 of the EAR, and the General Prohi-

bitions found in part 736 of the EAR, apply to routed export transactions. The U.S. principal party in interest is the exporter and must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization, *unless* the U.S. principal party in interest obtains from the foreign principal party in interest a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority, making the U.S. agent of the foreign principal party in interest the exporter for EAR purposes. One writing may cover multiple transactions between the same principals. See § 748.4(a)(3) of the EAR.

NOTE TO PARAGRAPH (b): For statistical purposes, the Foreign Trade Statistics Regulations (15 CFR part 30) have a different definition of "exporter" from the Export Administration Regulations. Under the FTSR the "exporter" will always be the U.S. principal party in interest. For purposes of licensing responsibility under the EAR, the U.S. agent of the foreign principal party in interest may be the "exporter" in a routed transaction.

(c) *Information sharing requirements.* In routed export transactions where the foreign principal party in interest assumes responsibility for determining and obtaining licensing authority, the U.S. principal party in interest must, upon request, provide the foreign principal party in interest and its forwarding or other agent with the correct Export Control Classification Number (ECCN), or with sufficient technical information to determine classification. In addition, the U.S. principal party in interest must provide the foreign principal party in interest or the foreign principal's agent any information that it knows will affect the determination of license authority, see § 758.1(g) of the EAR.

(d) *Power of attorney or other written authorization.* In routed export transactions, a forwarding or other agent that represents the foreign principal party in interest, or who applies for a license on behalf of the foreign principal party in interest, must obtain a power of attorney or other written authorization from the foreign principal party in interest to act on its behalf.